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10/589,132	08/11/2006	Hiroyuki Uono	294312US0PCT	5452
22850	7590	01/21/2011	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			LAJOS, MARIA J	
ART UNIT	PAPER NUMBER			
			1727	
NOTIFICATION DATE	DELIVERY MODE			
01/21/2011	ELECTRONIC			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/589,132	<b>Applicant(s)</b> UONO ET AL.
	<b>Examiner</b> MARIA J. LAIOS	<b>Art Unit</b> 1727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1)  Responsive to communication(s) filed on \_\_\_\_.
- 2a)  This action is **FINAL**.      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4)  Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_ is/are allowed.
- 6)  Claim(s) 18-29,32,35 and 38-46 is/are rejected.
- 7)  Claim(s) \_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on 11 August 2006 is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a)  All    b)  Some \* c)  None of:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftperson's Patent Drawing Review (PTO-942)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_

**DETAILED ACTION**

1. This office is in response to the amendment filed 12 October 2010. Claim 35 has been amended; claims 30-31, 33-34, 36-37 have been cancelled; Claims 38-46 have been added; Claims 18-29, 32, 35, 37-46 are currently pending.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Specification***

3. The objection to the abstract has been withdrawn.

***Claim Rejections - 35 USC § 103***

4. Claims 18-22, 24-26, 28-29, 32, 35, 38, 43-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zou et al. (US 2004/229125 A1) in view of Toshiya (JP 2002-175810).

As to claims 18, 19, 26, 32, 35 and 43, Zou et al. discloses a lithium ion rechargeable battery having a negative electrode; a lithium cobalt oxide as the positive electrode; an electrolyte (Paragraph 34). Zou et al. further discloses a negative active material coated onto a copper foil (current collector) to form the negative electrode (Paragraph 33). Zou et al. disclose the negative active material is a mixture of Graphite A and Graphite B, wherein Graphite B is man made graphite with an average diameter between 5-30 micrometers (Paragraph 11). Graphite A is disclosed a core shell structure having a graphite granule as the core and a carbon layer coating on the surface of the graphite

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granule (Paragraph 13-14.) However Zou et al. does not disclose Graphite A as having a graphite with an aspect ratio between 1.2-4 and compounded with a graphite which has different orientation. Toshiya discloses an anode material for a lithium secondary battery comprising a graphite composite mixture powder comprising a scaly carbon (a natural graphite-Paragraph 13) with an aspect ratio greater than 1 and less than 6 (more preferably less than 3-Paragraph 11) and a spherical substance such as meso carbon beads, glassy carbon (Paragraph 27). By having a graphite covered by a spherical substance the orientation of the spherical substance is different from the graphite core (Paragraph 10). Toshiya teaches this composite graphite material has sufficient hardness and adhesiveness (Paragraph 7). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace graphite A of Zou et al. with the graphite material of Toshiya to ensure sufficient hardness and adhesiveness of the active material to the current collector.

Furthermore for claims 43-46, the product-by-limitations of claims 43-46 are not given patentable weight since the courts have held that patentability is based on a product itself, even if the prior art product is made by a different process (In re Thorpe, 227 USPQ 964, 1985). Moreover, a product-by-process limitation is held to be obvious if the product is similar to a prior art product (In re Brown, 173 USPQ 685, and In re Fessman, 180 USPQ 324). Claims 43-46 as written does not distinguish the product of the instant application from the product of the prior art.

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As to claims 20, 28 and 29, modified Zou et al. discloses a mixture of Graphite A and Graphite B. Where Graphite B is man made graphite with an average diameter between 5-30 micrometers (Paragraph 11 of Zou et al.) and Graphite A (compound of Toshiya) is a composite of a graphite with an aspect ratio of 1.2-4 (equivalent to Graphite D of instant application) compounded with a spherical substance which has a different orientation of the graphite (equivalent to Graphite E of instant application). Graphite powder A has the following properties graphite composite has BET of 5 m<sup>2</sup>/g or below (Paragraph 22 point c) and a particle diameter of between 1-100 and preferably between 5-50 micrometers (Paragraph 26). It is expected that composite mixture powder C has a similar tap density, BET and interlayer spacing, electrode density and discharging capacity as claimed since composite mixture powder C is made of Graphite A of Toshiya and Graphite B of Zou et al.

As to claim 21, Toshiya discloses the aspect ratio of the scaly carbon and the spherical substance to between 1.1-2.9 (Paragraph 9 point 1). The court have held that “[A] prior art reference that discloses a range encompassing a somewhat narrower claimed range sufficient to establish a prima facie case of obviousness.” *In re Peterson*, 315 F.3d 1325, 1330, 65 USPQ2d 1379, 1382-83 (Fed. Cir. 2003). See MPEP 2144.05.

As to claim 22, Toshiya discloses the graphite composite has BET of 5 m<sup>2</sup>/g or below (Paragraph 22 point c) and a particle diameter of between 1-100 and preferably between 5-50 micrometers (Paragraph 26) but does not state the tap density of the material between 0.8-1.35 g/cm<sup>3</sup>. However it is the position of

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the examiner that this is expected to be inherent to the powder since the particle diameter, the BET surface area and the aspect ratio of the material fall within the claimed range and since the taping density is related to the shape and size of the particles.

As to claim 24, Toshiya disclose the ratio of spherical substance to scaly carbon to be 40 or less and most preferably 50 % or less and greater than 5% (Paragraph 31). Toshiya teaches that if the ratio is too small the effect of increasing the film strength and the adhesive property is minimize and if it is too large then the capacity of the battery falls (Paragraph 31). Therefore it would have been obvious to one of ordinary skill in the art to adjust the amount of the scaly graphite to the powder because this provides sufficient adhesiveness and capacity for the battery.

As to claim 25, Zou et al. discloses the amount of Graphite A to Graphite B as between 25:75 and 80:20 (Paragraph 18). Graphite A is the graphite composite and Graphite B is the artificial graphite. Thus the ratio of the graphite composite powder (Graphite A) to the amount of graphite composite (Graphite A) and artificial graphite (Graphite B) falls within the claimed range.

As to claim 26, Zou et al. discloses that Graphite B is and artificial graphite and Toshiya discloses that the spherical substance is also an artificial graphite (Paragraph 27). Therefore the material can be the same.

As to claims 38, Zou et al. discloses a lithium ion rechargeable battery having a negative electrode; a lithium cobalt oxide as the positive electrode; an electrolyte (Paragraph 34). Zou et al. further discloses a negative active material

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coated onto a copper foil (current collector) to form the negative electrode (Paragraph 33). Zou et al. disclose the negative active material is a mixture of Graphite A and Graphite B, wherein Graphite B is man made graphite with an average diameter between 5-30 micrometers (Paragraph11). Graphite A is disclosed a core shell structure having a graphite granule as the core and a carbon layer coating on the surface of the graphite granule (Paragraph 13-14.) However Zou et al. does not disclose Graphite A as having a graphite with an aspect ratio between 1.2-4 and compounded with a graphite which has different orientation. Toshiya discloses an anode material for a lithium secondary battery comprising a graphite composite mixture powder comprising a scaly carbon (a natural graphite-Paragraph 13) with an aspect ratio greater than 1 and less than 6 (more preferably less than 3-Paragraph 11) and a spherical substance such as meso carbon beads, glassy carbon (Paragraph 27). By having a graphite covered by a spherical substance the orientation of the spherical substance is different from the graphite core (Paragraph 10). Toshiya teaches this composite graphite material has sufficient hardness and adhesiveness (Paragraph 7). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to replace graphite A of Zou et al. with the graphite material of Toshiya to ensure sufficient hardness and adhesiveness of the active material to the current collector. Furthermore it is expected that the composite power would have an aspect ratio within the claimed range since the core has an aspect ratio of 1-6 and the coating is covering the core.

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As to claim 39 and 41, Toshiya discloses a graphite covered by a spherical substance the orientation of the spherical substance is different from the graphite core (Paragraph 10) thus the spherical substance can be considered random while the graphite core is considered to be crystal orientation.

As to claim 40 and 42, Toshiya discloses a graphite covered by a spherical substance thus orientation of the spherical substance is different from the graphite core (Paragraph 10) thus each has a different crystal orientation.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zou et al. (US 2004/0229125 A1) and Toshiya (JP 2002-175810) as applied to claims 18-22, 24-26, 28-29, 32 and 35 above, and further in view of Sato et al. (US 20003/0134201).

As to claim 23, Zou et al. disclose the Graphite B is man made graphite with an average diameter between 5-30 micrometers (Paragraph 11) but does not disclose the BET specific surface area between 0.3-3 m<sup>2</sup>/g. Sato et al. disclose a lithium battery and teaches a carbon coated graphite material having a preferred BET specific surface of 0.1-4 m<sup>2</sup>/g (Paragraph 49). Sato teaches that BET affects the charge/discharge characteristics of the battery (Paragraph 50) thus recognizing BET as a result effective variable. Therefore it would have been within the skill of the ordinary artisan to adjust the BET surface area of Graphite B of Zou et al. of obtain favorable rapid charge/discharge characteristics within the battery. Discover of optimum value of result effective variable is known

process is ordinarily within skill of art. *In re Boesch*, CCPA 1980, 617 F.2d 272, 205 USPQ215.

6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zou et al. (US 2004/229125 A1) and Toshiya (JP 2002-175810) as applied to claims 18-22, 24-26, 28-29, 32 and 35 above, and further in view of Takashi (JP 2001-236950)

As to claim 27, modified Zou et al. discloses a negative active material (Graphite (C)) comprising a mixture of Graphite A (comprising a powder of a graphite (D) with an aspect ratio as claimed compounded with a graphite (E) which has a different orientation from graphite (D)) and Graphite B (comprising an artificial graphite) as is disclosed above and incorporated herein but does not disclose a third graphite comprising a natural graphite powder (Graphite (G)) or the ratio of Graphite (C) to the total amount of Graphite (C) and Graphite (G) is between 20-90 weight percent. Takashi discloses a negative electrode with three types of carbon materials including a scaly carbon (natural carbon) and specifically teaches adding scaly carbon in the amount of 35 weight percent (Paragraph 37). By using a mixture of carbon materials the charge/discharge cycle performance can be enhanced (Paragraph 61). It would have been obvious to one of ordinary skill in the art at the time of the invention to include a third graphite to the battery of Zou et al. because Takashi discloses that a mixture of three types of carbon can be adjusted to enhance the performance of the battery.

***Response to Arguments***

7. Applicant's arguments filed 10/12/2010 have been fully considered but they are not persuasive.

8. Applicant argues that claim 18 was not read in light of the specification and that Graphite B has a special meaning. (Pages 9-16, 21-22)

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., graphitization of Graphite B) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

9. In response to applicant's arguments (Pages 15-16) against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

10. In response to applicant's argument (Page 17) that there is no teaching, suggestion, or motivation to combine the references, the examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d

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347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, Toshiya teaches this composite graphite material has sufficient hardness and adhesiveness (Paragraph 7).

11. Applicant further argues claim 38, need to have different crystal orientation. (Page 18-19)

The spherical covering on the graphite would have different crystal orientation since the covering and the graphite which it covers are two different compounds.

#### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIA J. LAIOS whose telephone number is (571)272-9808. The examiner can normally be reached on 11am-7pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dah-Wei Yuan can be reached on 571-272-1295. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. J. L./  
Examiner, Art Unit 1727

/Dah-Wei D. Yuan/  
Supervisory Patent Examiner, Art Unit 1727